



THE UNIVERSITY *of* EDINBURGH

## Edinburgh Research Explorer

### The Myth of the Optional War

**Citation for published version:**

Oberman, K 2015, 'The Myth of the Optional War: Why States Are Required to Wage the Wars they are Permitted to Wage', *Philosophy and Public Affairs*, vol. 43, no. 4, pp. 255–286.  
<https://doi.org/10.1111/papa.12063>

**Digital Object Identifier (DOI):**

[10.1111/papa.12063](https://doi.org/10.1111/papa.12063)

**Link:**

[Link to publication record in Edinburgh Research Explorer](#)

**Document Version:**

Peer reviewed version

**Published In:**

Philosophy and Public Affairs

**General rights**

Copyright for the publications made accessible via the Edinburgh Research Explorer is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

**Take down policy**

The University of Edinburgh has made every reasonable effort to ensure that Edinburgh Research Explorer content complies with UK legislation. If you believe that the public display of this file breaches copyright please contact [openaccess@ed.ac.uk](mailto:openaccess@ed.ac.uk) providing details, and we will remove access to the work immediately and investigate your claim.



## **The Myth of the Optional War: Why States Are Required to Wage the Wars they are Permitted to Wage\***

Within just war theory, much has been written on the question of when states are morally *permitted* to wage war. Much less is written on the question of when states are morally *required* to wage war. In the literature that does exist, the predominant view is that while there are wars that states are required to wage and, of course, many wars states are prohibited from waging, there is also a middle category: wars that states are permitted but not required to wage.<sup>1</sup> These are what we may call “optional wars”. If a war is optional, a state enjoys moral discretion over whether or not to wage it.

This article argues that there are no optional wars. States are either required to wage war or prohibited from doing so. The article considers two arguments for optional war. The first relates to wars of humanitarian intervention. It holds that a humanitarian war can be so costly for the soldiers and taxpayers of the intervening state, that the state is not required to wage the war, although it may remain permitted to do so. The second relates to wars of national self-defence. It holds that states have the right to defend themselves but that this right is, at least sometimes, discretionary:

---

\* I presented this article to Edinburgh University’s Political Theory Research Group and received helpful feedback. I am also grateful to Alfred Archer, Daniel Butt, Philip Cook, Christina Dineen, Elizabeth Cripps, Alan Oberman, David Rodin and Victor Tadros for their suggestions on various drafts. The insightful comments of the two reviewers transformed the article for the better. Particular thanks are owed to Jonathan Parry, James Stazicker and Patrick Tomlin for multiple conversations and invaluable advice.

<sup>1</sup> See C.A.J. Coady, *The Ethics of Humanitarian Intervention*, (Washington: United States Institute for Peace, 2002), p. 25; David Miller, “The Responsibility to Protect Human Rights,” in *Legitimacy, Justice and Public International Law*, ed. Lukas H. Meyer, (Cambridge: Cambridge University Press, 2009); Jeff McMahan, “Humanitarian Intervention, Consent and Proportionality,” in *Ethics and Humanity: Themes from the Philosophy of Jonathan Glover*, ed. N. Ann Davis, Richard Keshen and Jeff McMahan, (New York: Oxford University Press, 2010), pp. 55-63; Terry Nardin, “The Moral Basis of Humanitarian Intervention,” *Ethics & International Affairs* 16 (2002): 57-70, at p. 69; Fernando R. Tesón, “Eight Principles for Humanitarian Intervention,” *Journal of Military Ethics* 5 (2006): 93-113, at pp. 97-98; Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, (New York: Basic Books, 2000) pxiii, p70; Noam J. Zohar, “Can a War be Morally ‘Optional’?,” *Journal of Political Philosophy* 4 (1996): 229-241.

states may choose whether or not to exercise it. The first of these arguments is the more popular. Humanitarian intervention, not national self-defence, is the standard example of optional war. Yet we shall find that the second argument, while ultimately unsuccessful, is actually the more plausible of the two.

Both arguments employ what Michael Walzer has referred to as the “domestic analogy”: an analogy between the ethics of war and the ethics of violence undertaken by ordinary individuals.<sup>2</sup> Individuals are not always required to use force when they are permitted to do so. If the analogy held, the idea of the optional war would be compelling. But the analogy does not hold. The differences between states and individuals are such that states lack the moral freedom individuals possess. The domestic analogy has already attracted significant criticism. A number of philosophers have criticised its use to derive conclusions as to when war is permissible.<sup>3</sup> This article demonstrates that the domestic analogy can be equally misleading when applied to the question of when war is required.

Before embarking, two clarifications. First, our focus in this article is on wars waged by states. We are not concerned with wars waged by militias or other non-state actors. Second, the idea we are interested in is the idea that wars can be optional under real world conditions: conditions that either currently obtain or could realistically come to obtain. Whether wars could be optional in some highly artificial scenario, such as one in which state decisions result from a perfect consensus amongst citizens, we will not investigate. Proponents of optional war argue that under real

---

<sup>2</sup> Walzer, *Just and Unjust Wars*, p. 58.

<sup>3</sup> Charles R. Beitz, *Political Theory and International Relations*, (Princeton, NJ: Princeton University Press, 1999), pp. 71-74; Richard Norman, *Ethics, Killing and War*, (Cambridge: Cambridge University Press, 1995), pp. 132-139, 169-173; Jeff McMahan, “What Rights Can be Defended by Means of War?,” in *The Morality of Defensive War*, ed. Cécile Fabre and Seth Lazar, (Oxford: Oxford University Press, 2014); David Rodin, *War and Self-Defense*, (Oxford: Oxford University Press, 2002), pp. 141-162.

world conditions, states can wage wars they are not required to wage. That is the idea I seek to critique.

Sections 1 to 3 address the argument that wars of humanitarian intervention can be optional because the costs can exceed that which soldiers and taxpayers are obliged to bear. Section 1 presents this argument. Section 2 critiques it, demonstrating that cost can render a war impermissible, but not optional. Section 3 shows how considerations of choice, consent and political obligation cannot rescue the idea of optional intervention. Sections 4 and 5 address the argument that the right to national self-defence is sometimes discretionary. Section 4 shows that national self-defence is morally required when justified as a means to defend the rights of individual citizens or uphold the norm of non-aggression. Section 5 considers the idea that national self-defence could be justified to defend the state as a community. It concedes that if there were cases in which this community justification was the *sole* justification for war, war could be optional, but finds strong reason to doubt that any such cases arise.

## **1. Humanitarian Wars**

Wars of humanitarian intervention require a weighty justification. One reason for this is that they are a form of *intervention*. It is plausible to think that states should not normally intervene in the affairs of other states. A second reason is that wars of humanitarian intervention are a form of *war*. War involves killing and killing should never be engaged in for a trivial cause.

That wars of humanitarian intervention require a weighty justification is widely recognised. There is widespread agreement that humanitarian intervention is only justified in response to a profound injustice. On some accounts, intervention is

only justified against regimes that persistently commit widespread breaches of basic human rights, such as the human rights to life, freedom from torture and freedom from arbitrary imprisonment.<sup>4</sup> Others find even this too permissive. Walzer, for instance, argues that intervention is only justified to prevent abuse so extreme that it is comparable to the enslavement or massacre of an entire population.<sup>5</sup>

Since wars of humanitarian intervention require weighty justification, we already have good *prima facie* reason to think that states are required to wage the humanitarian wars they are permitted to wage.<sup>6</sup> Any cause that is so important that it is worth intervening and killing for would seem to be a cause that states are required to support. A war that is permissible, moreover, will fulfil standard just war conditions: proportionality, last resort, reasonable chance of success etc. Why then would a state not be required to wage a permissible humanitarian war?

There is a standard response to this question: the costs of a humanitarian war can be so high that the state is not required to wage it. There are at least two types of cost: the costs suffered by soldiers (deaths, injuries etc.) and the financial costs borne by taxpayers. The phrase “blood and treasure” captures both. The thought is that there is a limit to the sacrifice that can be expected of states even for the sake of those in dire need. To demand that states wage war whenever war stands to prevent a profound injustice is to demand too much.<sup>7</sup>

---

<sup>4</sup> See for instance David Luban, “Just War and Human Rights,” *Philosophy and Public Affairs* 9 (2007): 160-181, at pp. 173-176; James Pattison, *Humanitarian Intervention and The Responsibility To Protect: Who Should Intervene?*, (Oxford: Oxford University Press, 2010), pp. 20-24; Fernando R Tesón, “The Liberal Case for Humanitarian Intervention,” in *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, ed. JL Holzgrefe and Robert O Keohane, (Cambridge: Cambridge University Press, 2003), pp. 96-97.

<sup>5</sup> Walzer, *Just and Unjust Wars*, pp. 101-108.

<sup>6</sup> Kok-Chor Tan, “The Duty to Protect,” in *Nomos XLVIII: Humanitarian Intervention*, ed. Terry Nardin and Melissa S. Williams, (New York: New York University Press, 2006), pp. 90-91.

<sup>7</sup> McMahan, “Humanitarian Intervention,” p. 56; Miller, “The Responsibility,” pp. 41-44; Nardin, “The Moral Basis”, at p. 69; Tesón, “Eight Principles”, at p. 97; Walzer, *Just and Unjust Wars*, p. xiii; Zohar, “Can a War”, at pp. 236-239.

To see the force of this argument, consider analogous examples involving individuals. Suppose you are witnessing a brutal assault. You could intervene, but you risk being seriously injured. Most people would say that you have no obligation to intervene. Or suppose that by donating every dollar you can spare, you can save lives in developing countries. Again, most would say you have no obligation to bear this cost. Morality, on this view, leaves people some space within which they can pursue their own interests, even when others are in dire need.

In these examples people have no obligation to assist others in dire need because the costs are too high. But note that if the costs were *not* too high, there *would* be a humanitarian obligation to assist.<sup>8</sup> If you could stop an assault or provide life saving aid at an acceptable cost, you should do so. Similarly, if states could intervene to protect people against some profound injustice without imposing overly burdensome costs upon soldiers and taxpayers, they would be morally required to do so.<sup>9</sup>

There is, of course, significant scope for disagreement as to what constitutes an acceptable or overly burdensome cost. Different accounts of morality yield different conclusions, some more demanding, some less so. This article takes no part in that debate. It follows proponents of the idea of the optional war in assuming that there is some limit to the cost that people are obliged to bear for the sake of those in need. It offers no opinion as to where the limit lies.

One further complication worth noting is that there are in fact two ways to fill out the idea of an optional war of humanitarian intervention (henceforth “optional

---

<sup>8</sup> A humanitarian obligation requires its bearer to provide assistance because others are in need. As we shall see, it is important to distinguish humanitarian from political obligations. Political obligations require citizens to obey decisions taken by their state’s decision makers. I return to this distinction in section 3.

<sup>9</sup> None of the proponents of the idea of optional intervention deny this point and some endorse it. See, for instance, McMahan, “Humanitarian Intervention,” p. 57; Tesón, “Eight Principles”, at p. 98.

intervention”). One straightforward view is that when a state is permitted but not required to intervene, it has no duty of any kind to do so. If it wages a humanitarian war, its act is supererogatory.<sup>10</sup> On a second view, there is a duty to intervene but the duty is “imperfect”. It falls upon all states collectively, leaving each state free to decide whether or not to fulfil it.<sup>11</sup> There are important differences between these two views of optional intervention, but they need not detain us. Both views claim that a particular state can be permitted but not required to wage a humanitarian war.

We have now explained one important element of the idea of optional intervention: states are not always required to wage permissible humanitarian wars, since sometimes the costs are overly burdensome to soldiers and taxpayers. But the question now arises: why should we regard a war as permissible if it imposes overly burdensome costs? Surely, if a war imposes overly burdensome costs it is, for this reason, impermissible? The most plausible answer to this question is that states are free to voluntarily assume costs they are not required to bear.<sup>12</sup> Here again the analogy with ordinary individuals illuminates the argument. You may be under no obligation to tackle a dangerous assailant, but you can if you wish. You may not be required to donate every spare dollar, but you are still permitted to do so. It is you, after all, who will bear the costs. If the analogy worked, the idea of optional intervention would be compelling. But the analogy fails.

## **2. The Cost Principle**

Unlike individuals, states are composed of various subgroups. Let us specify four: the government, voters, soldiers and taxpayers. Typically, it is the government

---

<sup>10</sup> Zohar, “Can a War”, at pp. 237-238.

<sup>11</sup> Walzer, *Just and Unjust Wars*, p. xiii.

<sup>12</sup> Cécile Fabre, *Cosmopolitan War*, (Oxford: Oxford University Press, 2012), p. 180; McMahan, “Humanitarian Intervention,” p. 56.

that decides whether or not to wage war. In democracies, voters might also be said to share in the decision, a possibility I return to below. The government and (perhaps) voters are thus the decision makers. Soldiers and taxpayers are the cost bearers. When a state wages a war, soldiers are forced to fight it and taxpayers to fund it.<sup>13</sup>

We can now clarify what it means to say that a state is permitted or required to wage war: it means that a state's decision makers are permitted or required to decide to wage war. What the state is permitted or required to do is thus ultimately a matter of what decision makers are permitted or required to decide. Yet cost bearers are not irrelevant to these considerations. When states wage war, it is cost bearers who are assigned the costs of waging it. Decision makers are thus only permitted to decide to wage war when they can permissibly assign the costs to cost bearers.

If we now consider again the analogy with humanitarian acts of individuals, we can see how misleading it is. The individuals in the assault and aid examples bear the costs of their decisions themselves. When decision makers decide to wage humanitarian wars, by contrast, they impose the costs on soldiers and taxpayers. The correct analogy then is not with humanitarian acts performed by individuals but with laws requiring their performance. We should think not of an individual choosing to intervene in an assault but Good Samaritan laws requiring them to intervene. We should think not of people choosing to contribute to development aid but governments taxing people for this purpose.

In all such cases, there must be a limit to the costs that decision makers can forcibly impose upon cost bearers (a "limit to imposition") as well as a limit to the costs that cost bearers are obligated to bear (a "limit to obligation"). A Good

---

<sup>13</sup> While soldiers are forced to fight in wars on pain of court martial, they may, of course, have joined the military voluntarily. I consider the relevance of this point below.



Samaritan law that required people to run dangerous risks would be widely regarded as unjust. So would a tax that required taxpayers to surrender every spare dollar to fund development aid. But where, precisely, does this limit to imposition lie?

The principle I propose is this: those in power should not force people to render humanitarian assistance to those in dire need if the costs exceed that which people have a humanitarian obligation to bear.<sup>14</sup> Let us call this the “Cost Principle”. The Cost Principle effectively holds that the limit to imposition is no higher than the limit to obligation. If the cost of providing assistance is so large that cost bearers have no humanitarian obligation to bear it, decision makers should not foist it upon them.

What reason is there for believing that the two limits are related in this way? One clue comes from how we think about the above cases. Consider Good Samaritan laws. Those who defend these laws argue that they enforce people’s humanitarian obligations to intervene to assist those in need when the risks are minor.<sup>15</sup> No one proposes, however, that people be forced to run risks so grave that they have no humanitarian obligation to bear them. On the contrary, some scholars question the permissibility of forcing people to intervene even when people are clearly obliged to

---

<sup>14</sup> I am not the first to elaborate a principle of this kind. See Larry A. Alexander, “Scheffler on the Independence of Agent-Centered Prerogatives from Agent-Centered Restrictions,” *The Journal of Philosophy* 84 (1987): 277-283, at pp. 278-279; Bashshar Haydar, “Forced Supererogation and Deontological Restrictions,” *The Journal of Value Inquiry* 36 (2002): 445-454; Liam Murphy, “Beneficence, Law, and Liberty: The Case of Required Rescue,” *Georgetown Law Journal* 89 (2000): 605-666, at pp. 647-648; R. H. Myers, “Prerogatives and Restrictions from the Cooperative Point of View,” *Ethics* 105 (1994): 128-152, at pp. 144-147; Judith Jarvis Thomson, “A Defense of Abortion,” *Philosophy & Public Affairs* 1 (1971): 47-66, at pp. 63-64. Also see the Beitz and Murphy references in n. 18 below.

<sup>15</sup> Cécile Fabre, “Good Samaritanism: A Matter of Justice,” *Critical Review of International Social and Political Philosophy* 5 (2002): 128-144, at p. 133; Joel Feinberg, “The Moral and Legal Responsibility of the Bad Samaritan,” *Criminal Justice Ethics* 3 (1984): 56-69, at pp. 57-64; John Kleinig, “Good Samaritanism,” *Philosophy & Public Affairs* 5 (1976): 382-407, at p. 384.

do so.<sup>16</sup> The debate, in other words, is over whether the costs that morality obliges people to bear can permissibly be imposed by law, not whether the law can impose additional costs. Next consider development aid. Those defending aid take pains to argue that taxpayers are obliged to fund it.<sup>17</sup> The fact that aid can achieve good results is not, in itself, thought sufficient justification. Philosophers recognise that governments should not force taxpayers to give more in aid than taxpayers are obliged to give.<sup>18</sup>

There is a deeper argument for the Cost Principle, however. Recall that on the conception of morality assumed by proponents of optional war, it is important that people are left a certain space to pursue their own interests. It is this concern that sets the limit to obligation. But if morality leaves a certain space for people to pursue their own interests, why would morality permit powerful third parties, such as the government, to intrude upon this space by forcing people to render additional assistance? A morality that both leaves space for self-interest and permits intrusion upon that space by third parties makes little sense. If it is as important as is claimed that people are left a space to pursue their own interests when confronted with the needs of others, then that space must set limits not only on what they are obliged to do, but also on what they can be forced to do. The two limits are so related, in other

---

<sup>16</sup> Joshua Dressler, "Some Brief Thoughts (Mostly Negative) about Bad Samaritan Laws Symposium," *Santa Clara Law Review* 40 (1999): 971-990; H. M. Malm, "Liberalism, Bad Samaritan Law, and Legal Paternalism," *Ethics* 106 (1995): 4-31.

<sup>17</sup> Peter Singer, "Famine, Affluence, and Morality," *Philosophy & Public Affairs* 1 (1972): 229-243, see esp. p. 240; Robert E. Goodin, *Protecting the Vulnerable: A Reanalysis of Our Social Responsibilities*, (Chicago: University of Chicago Press, 1985), pp. 154-168; Brian R. Opeskin, "The Moral Foundations of Foreign Aid," *World Development* 24 (1996): 21-44.

<sup>18</sup> Charles R. Beitz, "Cosmopolitan Ideals and National Sentiment," *Journal of Philosophy* 80 (1983): 591-600, at pp. 598-599; Liam B. Murphy, *Moral Demands in Nonideal Theory*, (Oxford: Oxford University Press, 2000), p. 84.

words, because the concern that sets the limit to obligation applies equally when setting the limit to imposition.<sup>19</sup>

We can reach the same conclusion from the other direction. Imagine that we have already determined the limit to imposition and we are now seeking to determine the limit to obligation. Morality, we have determined, permits those in power to force people to provide humanitarian assistance at a certain level of cost. Given this, why would morality not also directly require people to provide humanitarian assistance up to that level of cost? The answer cannot be that the level of cost is too high such that it threatens to deny people sufficient space to pursue their own interests. For if that were the case, then morality would not have permitted those in power to impose these costs upon people. Having permitted those in power to force people to provide humanitarian assistance at a certain level of cost, there would be no harm in directly requiring people to do so.

Having presented the Cost Principle, two clarifications. First, the extent of people's humanitarian obligations should not be identified with what they are obliged to provide in the absence of the state. The state is a useful tool, able to solve collective action problems and reach needy people who could not otherwise be assisted. Given the existence of this tool, people are likely to owe different obligations to those in need than they would owe in a state of nature.<sup>20</sup> The Cost Principle should not then be taken to condemn states that force people to provide further assistance to that which they would be obliged to provide absent the state. People can be forced to provide further assistance as long the existence of the state has the effect of expanding their humanitarian obligations. It is only when the state

---

<sup>19</sup> Haydar, "Forced Supererogation and Deontological Restrictions", at pp. 452-454.

<sup>20</sup> See Henry Shue, "Mediating Duties," *Ethics* 98 (1988): 687-704.

seeks to impose costs that exceed these (appropriately expanded) humanitarian obligations that the Cost Principle condemns its behaviour.

Second, it is worth emphasising that the argument given for the Cost Principle is an argument against the imposition of overly burdensome costs. The argument should not be taken to involve a more general opposition to forcing people to do what they are not morally obliged to do. This point will become clear when we consider the question of whether any state activity is morally optional; a question I consider at the end of Section 3.

Let us note the implications of the Cost Principle for humanitarian intervention. The cost argument for optional war holds that intervention is sometimes optional because the costs can exceed what soldiers and taxpayers have a humanitarian obligation to bear. Applying the Cost Principle, it is clear that this argument cannot work. States cannot permissibly wage humanitarian wars when the costs to cost bearers exceed their humanitarian obligations. The primary example of an optional war given in the literature is nothing but an example of an impermissible war.<sup>21</sup>

### **3. Choice, Consent and Political Obligation**

There are, however, three ways a proponent of the idea of optional intervention might still seek to justify the assignment of costs to soldiers and taxpayers. It might be argued that cost bearers (1) chose to wage war, (2) consented to bear costs or (3) owe a non-consent-based political obligation to bear the costs. Let us explore each possibility in turn.

---

<sup>21</sup> For related thoughts see James Pattison, "Whose Responsibility to Protect? The Duties of Humanitarian Intervention," *Journal of Military Ethics* 7 (2008): 262-283, at p. 270.

To the extent that cost bearers have themselves chosen to wage war, they would seem unable to complain against bearing the costs. Soldiers and taxpayers are also voters. In a democracy, voters choose the government through competitive elections. When a government decides to wage war, voters might thus be said to share in the decision to wage war. This claim seems most plausible if the decision to wage war is taken as a result of an election: the pro-war party having won the vote.<sup>22</sup>

The problem with this argument is that even when some cost bearers can be said to share in the decision to wage war, not all can. It is in the nature of democracy that people disagree. Even if a majority votes in favour of war, this leaves a minority who oppose it. This outvoted minority will be asked to bear the costs as well. Decisions makers must then justify forcing dissenting soldiers and taxpayers to bear the costs of a war they oppose. It cannot be said that the decision to wage war was their own, for that is not so.<sup>23</sup>

Let us consider the second strategy: perhaps cost bearers can be said to have consented to bear the costs of a decision to wage war whether or not the decision is their own. This argument is most plausible in the case of soldiers. Soldiers in a professional military have chosen soldiering as their career. That choice might be said to involve consenting to the costs of fighting wars.<sup>24</sup> It is difficult to see how the argument could be made for taxpayers. People do not typically choose to be taxed.

---

<sup>22</sup> The argument is much less plausible when, as is standardly the case, the decision to wage war is taken outside of an election. If voters did not know at the time of the election that the party they were voting for would later decide to wage war, it seems implausible to claim that the decision to wage war was taken by voters.

<sup>23</sup> It might still be argued that the minority has a duty to respect the outcome of the democratic process. I consider this argument below.

<sup>24</sup> Tesón, "The Liberal Case," p. 127. As Tesón notes, however, the characterisation of soldiers as consenting volunteers may be challenged. It is often people from deprived backgrounds that enlist in the military. The pressures they face might be said to render their decision to enlist less than voluntary. Tesón is able to respond to this objection only by appeal to a libertarian conception of consent, under which socio-economic conditions are deemed irrelevant. Those who reject this libertarian conception of consent have reason to question the consent argument even in the case of soldiers.

But let us imagine, if only for the sake of argument, a case in which a war is funded not by general taxation but by some voluntary scheme: donations from pro-war citizens, perhaps, or a “voluntary tax” such as a state lottery.

If decision makers could order a humanitarian war that prevents a profound injustice without violating standard just war conditions, using the resources of consenting adults, then, arguably, they would be permitted to do so.<sup>25</sup> But then if they were permitted to order such a war, why would they not be required to do so? Recall that the argument for optional intervention rested on the concern that humanitarian war can impose overly burdensome costs upon soldiers and taxpayers. But here we are imagining a case in which that concern has been addressed: the costs are not merely imposed; they have been consented to. Once the concern is removed, the argument for optional intervention collapses. For if cost bearers have consented and their consent renders intervention permissible, then decision makers have no justification for refraining from ordering the intervention that, *ex hypothesi*, stands to protect people from a profound injustice.

For an analogy, consider the moral duty states have to provide police protection from assault. We have suggested that states should not force people to run significant risks to tackle assailants. However, some people are willing to volunteer for the police and assume the significant risks involved. Given this, it would seem wrong for the state not to maintain a police force and use it accordingly. A state that leaves its citizens without police protection from assault would fail in its obligations. When the state can permissibly make use of volunteers to assist people in dire need,

---

<sup>25</sup> Although some might object, on paternalistic grounds, that when the costs are particularly high, it can be wrong to utilize even consenting adults for humanitarian ends. If so, consent cannot always justify humanitarian war. To examine the consent argument further, I set this objection aside.

the state is required to do so. This principle applies in the case of police protection from assault; it also applies to humanitarian intervention.

Let us turn to the third approach. Perhaps citizens can be said to owe a political obligation to bear the costs of a government decision even if the decision is not their own and they have not consented to bear the costs. The idea that people can owe a political obligation in the absence of consent is controversial but not implausible. Consider, for instance, the argument that democratic principles can require people to obey the law. If democracy is a fair way to make decisions it may be wrong for an outvoted minority to refuse to accept the result.<sup>26</sup> Indeed, the political obligation that people have to obey democratically made decisions may be so weighty that it might require them to bear costs surpassing that which they have a humanitarian obligation to bear.

The implication of this argument for humanitarian wars is that dissenting citizens may owe a political obligation to bear the costs of a war, even though the costs exceed that which they have a humanitarian obligation to bear. Let us suppose this is the case. Still the decision to wage war would be wrong because of the high costs involved. To see this, note first that the idea that citizens have a political obligation to obey a decision does not entail that the decision was morally permissible. This is something that proponents of political obligation themselves insist upon. A decision can be wrong, they argue, and still citizens can be obligated to obey. Thus to take the example of the democratic argument for political obligation, the argument does not hold that elections always yield the right result, but that an outvoted minority should ordinarily respect the result even if it is morally wrong.

---

<sup>26</sup> Thomas Christiano, *The Constitution of Equality: Democratic Authority and its Limits*, (Oxford: Oxford University Press, 2008); Peter Singer, *Democracy and Disobedience*, (Oxford: Clarendon Press, 1973).

One cannot then show that a decision is morally permissible merely because it was arrived at democratically. A state can be democratic and act wrongly.<sup>27</sup>

There is no reason then to abandon the Cost Principle: those in power should not force people to provide humanitarian assistance if the costs exceed that which people have a humanitarian obligation to bear. *Once decision makers have made their decision*, cost bearers may have a political obligation to comply, but that does not mean that it was permissible for decision makers, *when making their decision*, to opt to impose such high costs. The idea that cost bearers owe a political obligation to support an intervention cannot then rescue decision makers from the charge of having wrongfully imposed overly burdensome costs.

I have so far invoked the Cost Principle in rejecting the argument from political obligation. There is, however, at least one approach to political obligation that is itself incompatible with the idea of optional war. According to Joseph Raz's influential "service conception" of authority, one can be obliged to obey an authority because, and to the extent that, "conformity with it improves one's conformity with reason".<sup>28</sup> Raz's thought is that sometimes others are better placed to determine what we should do than we are ourselves. These others might make mistakes, but as long as they are less prone to making mistakes than we are, we have reason to obey them.

Could Raz's account of authority apply to the decision to wage war? It could if (a) there is a right answer as to whether the citizens of a state should wage a war and (b) citizens would do better in acting in accordance with that answer by obeying

---

<sup>27</sup> The idea that citizens can have a political obligation to respect a wrong decision has a long history; it is the subject of Plato's *Crito*. For modern defenses see Christiano, *The Constitution of Equality*, pp. 3, 250-251; Singer, *Democracy and Disobedience*, pp. 71-72; Michael Walzer, "Philosophy and Democracy," in *Philosophy and Democracy: An Anthology*, (Oxford: Oxford University Press, 2003), p. 272. David Estlund defends it in relation to war in "On Following Orders in an Unjust War," *Journal of Political Philosophy* 15 (2007): 213-234.

<sup>28</sup> Joseph Raz, *Between Authority and Interpretation: On the Theory of Law and Practical Reason*, (Oxford: Oxford University Press, 2009), p. 139.



the state's decision makers than by acting on their own judgment.<sup>29</sup> It is debatable how often these conditions are fulfilled.<sup>30</sup> But, the crucial point for our purposes is that, were these conditions fulfilled, decision makers would not be morally free to decide whether or not to wage war. If there is a right answer as to what people should do in a particular case, decision makers must aid their citizens to comply with that right answer. On the Razian account, this is why decision makers have authority. Decision makers who knowingly refrain from pursuing the "optimific action" (to use Raz's phrase) undermine the case for their own authority.<sup>31</sup>

Now, as it happens, it seems questionable that in the kind of case we are interested in – those involving supererogatory acts of humanitarian assistance – there is a right answer as to what people should do. Imagine you could save someone's life at a cost so grave you have no obligation to bear it. Should you? It seems impossible for anyone else to say. Others can advise you of the risks. But if you know the risks and you have no obligation to act either way, then the decision is yours alone. If this is so, there is no Razian argument for state authority on such matters. Citizens must be left to make the relevant decisions themselves.

Thus if we accept Raz's account of authority, we have an additional argument against optional war. For either there is an answer as to what people should do, in which case a state's decision makers may have authority but they must pursue that right answer, or there is no right answer, in which case there is no grounds for empowering decision makers on the issue. In neither case are decision makers morally free to decide as they please.

---

<sup>29</sup> For an application of Raz's account of authority to just war theory see Jonathan Parry, "Authority and Harm in War", PhD Thesis (University of Sheffield, 2014).

<sup>30</sup> Compare Estlund, "On Following Orders"; Jeff McMahan, *Killing in War*, (Oxford: Clarendon Press, 2009), pp. 66-70.

<sup>31</sup> Joseph Raz, "Liberty and Trust," in *Natural Law, Liberty and Morality*, ed. Robert P. George, (Oxford: Clarendon Press, 1996), p. 119.

There is one last issue to be addressed. While this article claims there are no optional wars, someone might suggest that the implication of my argument is far more radical to the extent that it denies the possibility of morally optional state activity of any kind. After all, whenever a state undertakes projects, it forces taxpayers to fund them. If my argument were interpreted as supporting the broad principle that those in power should not force people to do what they have no independent moral obligation to do, it would seem that states could never undertake any project that is not morally required.<sup>32</sup>

But, in fact, my argument supports no such broad principle. The principle defended is the Cost Principle: those in power should not force people to provide humanitarian assistance to those in dire need if the costs exceed that which people have a humanitarian obligation to bear. The argument for the Cost Principle is an argument against the imposition of overly burdensome costs. The argument applies to a particular range of cases: those in which one group of people, A, would have an obligation to assist another group of people, B, were it not that the costs of assistance are too burdensome. Unlike the broader principle, my argument offers no blanket objection to the use of force in the absence of a moral obligation. When people lack an obligation to do something for reasons other than cost, force might still be permissible.

To see that my argument does not support the broad principle, it is helpful to consider such cases in which people lack an obligation for reasons other than cost. Consider the following:

---

<sup>32</sup> By “independent moral obligation” I mean a moral obligation that is not a political obligation. Henceforth, for the sake of simplicity, I shall drop the various qualifications and use “obligation” instead.

1. Perfectionism. The state taxes one group of people to fund projects (parks, theatres, museums etc.) that benefits that same group of people, all things considered.
2. Preference Dependent Benefit. The government proposes taxing one group of people to fund some inessential project (e.g. a high-speed rail system) that may benefit that same group of people. Whether or not the project actually benefits them depends on people's preferences. (If people prefer not to have high-speed rail, high-speed rail seems unlikely to benefit them).
3. Superfluous Transfer. The state taxes one group of people, A, to benefit another group of people, B, but in some superfluous way, satisfying no need, right or entitlement. (Suppose, for example, that A is taxed to fund a party in the B neighbourhood).

These cases are ideal types. In the real world, mixed cases are likely to arise. When, for instance, a state constructs high-speed rail to complement an already decent public transport system, arguably what it is doing is benefitting those taxpayers who want high-speed rail (as in Preference Dependent Benefit), while forcing those taxpayers who do not want it to provide a superfluous benefit to those who do (as in Superfluous Transfer).

In each of these cases, taxpayers seem to have no pre-existing moral obligation to contribute, but *not* because the costs are overly burdensome. In Perfectionism, the people who stand to benefit are the cost-bearers themselves and it is for this reason that they seem to have no obligation to contribute. If people want to refuse a benefit, they seem morally permitted to do so. The same is true in Preference Dependent Benefit but with the added twist that we cannot even know whether the project will benefit people without knowing what they want. In such a case, people seem to have no obligation to want one thing rather than another. In Superfluous

Transfer, A has no obligation to benefit B not because of the costs are too high (they might be minimal) but because of the superfluous nature of the benefit. As a number of philosophers have argued, there are some kinds of goods that we have no obligation to provide for others no matter how low the cost.<sup>33</sup>

In any such cases in which people lack a moral obligation for reasons other than cost, the argument for the Cost Principle does not apply. That argument is concerned with defending a certain space within which people can pursue their own interests when they are confronted with the high costs of assisting others. In the three cases listed above, no such concern need arise. In Superfluous Transfer, the costs could be minimal. In Perfectionism, there is no net-cost to speak of; the state's intervention leaves taxpayers better off. The same is true in Preference Dependent Benefit, assuming taxpayers want the good the state offers.

It is possible, of course, that the use of taxpayer's money in these cases is objectionable. Perhaps, as a number of philosophers have argued, states must restrict themselves to the enforcement of justice and thus cannot justify spending money on anything that taxpayers have no obligation to provide.<sup>34</sup> That view is not implausible, but it requires further argument to that offered in this article. As far as this article is

---

<sup>33</sup> Michael Ferry, "Does Morality Demand Our Very Best? On Moral Prescriptions and the Line of Duty," *Philosophical Studies* 165 (2013): 573-589; Terry Horgan and Mark Timmons, "Untying A Knot from the inside Out: Reflections on the "Paradox" of Supererogation," *Social Philosophy and Policy* 27 (2010): 29-63. To see that cost is not the issue in such cases it is helpful to consider examples where a person engages in supererogatory behaviour at *no* cost to herself. To use an example from Horgan and Timmons, suppose a person invites a sports-loving neighbour along to a baseball game. The neighbour makes enjoyable company and buys her own ticket. Or imagine that you can help brighten a stranger's day, as well as your own, by smiling at her as you pass her in the street. These are cases where benefiting is costless, yet in neither case does benefiting seem obligatory. People who choose not to invite their neighbours to baseball or pass a stranger without smiling do nothing wrong. In short, we are not obliged to satisfy every desire, whim or fancy that other people have whenever we can do so at little or no cost to ourselves. Questions of obligation arise only in relation to certain benefits; those satisfying basic needs being a particularly clear example.

<sup>34</sup> Jonathan Quong, *Liberalism without Perfection*, (Oxford: Oxford University Press, 2011); Victor Tadros, *The Ends of Harm: The Moral Foundations of Criminal Law*, (Oxford: Oxford University Press, 2011), pp. 78-83; Justin Weinberg, "Is Government Supererogation Possible?," *Pacific Philosophical Quarterly* 92 (2011): 263-281

concerned, the cases cited above could be cases in which state activity really is morally optional.

#### **4. National Self-Defence**

In the case of wars of national self-defence, a different argument for optional war can be made. This second argument holds that the right to national self-defence is, at least sometimes, discretionary: states are entitled to defend themselves but they are also entitled not to defend themselves. When this is so, a state that does defend itself, wages a war it is not required to wage.<sup>35</sup>

Again, the view appears plausible if we accept an analogy between states and individuals. An individual's right to self-defence does seem discretionary. If you are unjustly assaulted but, for whatever reason, choose not to defend yourself, then you do not act wrongly.<sup>36</sup> It is you, after all, who will suffer the consequences.

But again, the analogy fails. To understand why, we need to explore the possible justifications for national self-defence. When exploring these justifications, we should recall our previous finding: states can only justify waging war if they can justify the costs assigned to soldiers and taxpayers. This "permissible assignment of costs condition" applies, no matter which justification is given for war. If the costs are overly burdensome, or for whatever other reason cannot be permissibly assigned, war is impermissible.

---

<sup>35</sup> As noted above, this argument is much less popular than the argument concerning humanitarian intervention. Indeed, surprisingly little has been written on the idea of optional wars of national self-defence. Zohar ("Can a War", at p. 234) briefly argues against the idea; his reasons are similar to those explored below. Walzer is the one scholar who has defended it. In his treatment of the Winter War 1939-1940, Walzer claims the Finns were permitted but not required to resist Soviet aggression. While Walzer does not fully explain his position, he seems to be relying on something like the above argument.

<sup>36</sup> This, at least, has been the prevalent view in Western philosophy; Rodin, *War and Self-Defense*, p. 39.

So what could justify a war of national self-defence? Three main justifications are offered in the literature:

- (1) To defend the rights of individual citizens.
- (2) To defend the norm of non-aggression.
- (3) To defend the national community.

These justifications are not mutually exclusive. It is possible that a war could be justified on more than one of these grounds.<sup>37</sup> A further possibility, returned to below, is that at least some defensive wars cannot be justified at all.

Let us explore these justifications in turn, asking the same question of each: whether the value the justification refers to is one that the state can permissibly choose whether or not to defend. In the rest of this section, I consider justifications (1) and (2). I will argue that if a war is justified on these grounds, the state is required to wage it. In the next section, I concede that the idea of optional war might be vindicated if there were cases in which national self-defence were justified by (3) and (3) alone. However, I will explain why I do not think such cases arise.

Let us then consider the idea that national self-defence can be justified to defend the rights of individual citizens. This idea seems plausible since aggression violates individual rights. Which rights are violated depends on the nature of the aggressor. Those we might term “major aggressors” seek to violate our most fundamental rights: rights not to be killed, assaulted or subject to some similarly grave harm. Major aggressors will inflict such harm whether or not they are resisted.

---

<sup>37</sup> Walzer presents all three justifications, *Just and Unjust Wars*, pp. 53-63. Indeed, in places, Walzer seems to suggest that states are obligated to wage permissible wars of national self-defence in order to uphold the norm of non-aggression (ibid., p. 62) and defend individual rights (“The Moral Standing of States: A Response to Four Critics,” *Philosophy and Public Affairs* 9 (1980): 209-229, at p. 211). This makes Walzer’s claim that Finland was morally permitted but not required to wage the Winter War surprising. I am not the first to note Walzer’s vacillation on this issue; see Simon Caney, *Justice Beyond Borders: A Global Political Theory*, (Oxford: Oxford University Press, 2005), p. 195.

“Lesser aggressors”, by contrast, will do so only if they are resisted. Lesser aggressors threaten violence to enhance their power, expand their territory or pursue some like objective.<sup>38</sup> As long as their victims capitulate, no fundamental rights will be violated. Lesser aggressors might still violate other individual rights, however, such as rights to free speech, free association, property, the right not to be displaced and the right not to be subject to illegitimate rule. These rights may not be our most fundamental, but they are important and ordinarily demand protection. There is one right, moreover, that all aggressors violate: the right to live in the safety and security afforded by the law, free from the threat of unjustified force. For even if an aggressor does not kill or assault anyone, the mere threat to do so is a grave violation of people’s safety and security. Anyone who has been robbed at gunpoint knows this only too well.<sup>39</sup>

If a state is permitted to engage in national self-defence to protect the rights of its citizens, then it is also required to do so. Protecting citizens is a core state function. This represents the first point of disanalogy between national self-defence and individual self-defence. It is not a core function of ordinary individuals to protect others from attack. In this respect, a better analogy is with the police.<sup>40</sup> If a police officer and a group of civilians are attacked by an armed criminal, the police officer cannot act as if only her own life is at stake. She is on duty, and being on duty, she

---

<sup>38</sup> These are the terms used by McMahan, “What Rights,” p. 112. Other scholars make much the same distinction using different terminology. See for instance Rodin’s distinction between “bloodless invasion” and “genocidal aggression”, *War and Self-Defense*, pp. 131-139.

<sup>39</sup> Gerhard Øverland, “Conditional Threats,” *Journal of Moral Philosophy* 7 (2010): 334-345, at pp. 335-337; McMahan, “What Rights,” pp. 146-147; Uwe Steinhoff, “Rodin on Self-Defense and the “Myth” of National Self-Defense: A Refutation,” *Philosophia* 41 (2013): 1017-1036, at pp. 1021-1022.

<sup>40</sup> Steinhoff, “Rodin on Self-Defense”, at pp. 1020-1021.

must use the defensive force she is permitted to use. States are like this police officer; only states are always on duty.<sup>41</sup>

That states are required to defend their citizens' rights when defence is permissible remains true in democracies. If a majority votes against resisting an aggressor the state could permissibly resist, they effectively allow the rights of other citizens to be violated. These others include both the outvoted minority and those, such as children, who cannot vote. People may be free to allow themselves to be killed, enslaved, silenced, robbed, displaced, oppressed or unjustly threatened, but they cannot make this decision for others. Even if a voter is willing to forego state protection herself, she should not deny it to others.<sup>42</sup>

That states are required to wage permissible wars in defence of their citizens is particularly evident in cases of major aggression. States should not allow their citizens to be killed or assaulted if they can permissibly protect them.<sup>43</sup> Matters are less clear in cases of lesser aggression only because it is less clear that wars against lesser aggressors are permissible. Perhaps, the rights that lesser aggressors violate are insufficiently important to justify killing. Some philosophers take this view.<sup>44</sup> David Rodin, for instance, argues that it would be impermissible, in a domestic case, for an ordinary individual to kill someone to uphold the rights that lesser aggressors violate.

---

<sup>41</sup> This is not to say that everyone within the state must act like the police. When the state uses force to defend its citizens from aggression, it utilizes the military, much as when the state uses force to defend its citizens from crime, it utilizes the police. In both cases, ordinary citizens need only act in a supportive capacity, paying for the police and the military via taxation. The one exception to this is when states institute conscription. It follows from the argument made in previous sections that conscription could only be justified if the costs of fighting did not exceed that which ordinary citizens are morally obligated to bear. Even when a state is wrong to conscript, however, it could still be required to wage war to defend its citizens using a professional military. Again, the state's duty to provide its citizens with police protection provides a useful analogy; see Section 3 above.

<sup>42</sup> Zohar, "Can a War", at p. 234.

<sup>43</sup> Walzer, *Just and Unjust Wars*, p. 69. Walzer contrasts Nazi aggression, which he thinks states had a duty to resist, with Soviet aggression against Finland. It is clearly because Walzer views the Soviet attack as lesser aggression that he regards Finnish resistance as optional.

<sup>44</sup> Rodin, *War and Self-Defense*; David Rodin, "The Myth of National Self-Defence," in *The Morality of Defensive War*, ed. Cecile Fabre and Seth Lazar, (Oxford: Oxford University Press, 2014); Norman, *Ethics, Killing and War* ch. 4.



The paradigm case of justified self-defence, he argues, is in response to a physical attack. Beyond this paradigm, Rodin is willing to accept that killing could be permitted to avoid enslavement or life-long unjust imprisonment, but not violations of lesser freedoms.<sup>45</sup>

Rodin's challenge presents us with three possibilities: (a) Rodin is right and wars against lesser aggressors are simply unjustified, (b) Rodin is wrong and wars against lesser aggressors can be justified to defend individual rights, (c) wars against lesser aggressors can be justified but on some other grounds besides individual rights. I shall explore (c) in the rest of the article. Let me here consider (a) and (b). In either case, the idea of optional war fails. Consider (a) first. We have already established that states must wage all permissible wars against major aggressors. If all permissible wars against major aggressors are required and all wars against lesser aggressors impermissible, then wars of national self-defence are either required or impermissible. If we accept Rodin's view regarding lesser aggression, we can straightforwardly dismiss the possibility of optional wars of national self-defence.

There is reason however to think that Rodin is wrong and that at least some wars against lesser aggressors can be justified in defence of individual rights. Rodin's claims concerning ordinary citizens are misleading in at least two respects. First, even ordinary individuals seem permitted to kill in other cases besides the narrow range Rodin acknowledges. As Helen Frowe has persuasively argued, people who are subject to the tyrannical rule of another, even if they are not actually enslaved, may be permitted to use lethal force if necessary to escape.<sup>46</sup> The same seems true of people unjustly imprisoned for many years, even if they are due for eventual release. This

---

<sup>45</sup> Rodin, *War and Self-Defense*, p. 48.

<sup>46</sup> Helen Frowe, *Defensive Killing*, (Oxford: Oxford University Press, 2014), pp. 140-141.

point is important since many lesser aggressors are tyrants who imprison dissenters and deny everyone basic liberties. Indeed, lesser aggressors who seek to rule the countries they attack often have to resort to tyranny to maintain control.<sup>47</sup>

Second, moreover, we have found that ordinary individuals are not the best analogy for states. A better analogy is the police. Crucially then, the police can be permitted to use lethal force against armed criminals who only threaten others with serious harm. The police do not need to wait until the criminals have actually attempted to kill anyone. The fact that they are armed and refusing to lower their weapons can be sufficient.<sup>48</sup> One way to regard lesser aggressors is as a type of armed criminal: they break international law, threaten people with weapons and violate people's rights. If the police can shoot ordinary criminals who refuse to lower their weapons, the military seem permitted to shoot lesser aggressors who act likewise.<sup>49</sup>

There is then good reason to adopt position (b): to think, *pace* Rodin, that wars against lesser aggressors can be justified in defence of individual rights. Yet if a war against a lesser aggressor can be justified on this basis, then it must be waged. For as we have seen, states are obliged to defend the rights of their citizens whenever they are permitted to do so.

---

<sup>47</sup> Ibid., pp. 143-145.

<sup>48</sup> Steinhoff, "Rodin on Self-Defense", at p. 1021.

<sup>49</sup> Rodin considers this analogy between war and law enforcement, although he chooses to focus on law enforcement as punishment rather than (as in the above example) crime prevention (Rodin, *War and Self-Defense*, pp. 173-179). Rodin concedes that war could be justified as law enforcement were there an international authority capable of dispensing punishment impartially, but he argues that no such authority exists. I do not have space to properly respond to this argument here except to note, following Jacob Blair, that even if there were a strict impartiality condition for punishment, there is no reason to assume that this condition applies to crime prevention. This is important since crime prevention offers a better analogy for wars of national self-defence than punishment. Jacob Blair, "Tensions in a Certain Conception of Just War as Law Enforcement," *Res Publica* 14 (2008): 303-311, at pp. 309-311.

Let us turn to the second suggested justification for defensive wars: upholding the norm of non-aggression. Philosophers who make this argument urge us to consider the wider implications of particular conflicts. Successful aggression in one instance can encourage aggression at other times and places. If the norm of non-aggression is to survive, it must be upheld.<sup>50</sup> Walzer makes the point as follows:

Aggression challenges [international society] directly and is much more dangerous than domestic crime, because there are no policemen. But that only means that the “citizens” of international society must rely on themselves and on one another. Police powers are distributed among all the members... The rights of the member states must be vindicated, for it is only by virtue of those rights that there is a society at all. If they cannot be upheld (at least sometimes), international society collapses into a state of war or is transformed into a universal tyranny.<sup>51</sup>

Note the suggestion of a further point of disanalogy between states and ordinary individuals and a further point of analogy between states and the police. The point of disanalogy with individuals is that while individuals can call upon the police to uphold the law and maintain security, states have no international police upon which to call. The point of analogy with the police is that, since there are no international police, states must assume the relevant police powers themselves.

Suppose that Walzer is right that upholding the norm of non-aggression can at least sometimes justify war. If so, would war also be morally required? Yes, for reasons similar to those explored above. War would not be permissible unless something of significant moral importance was at stake. What is at stake here is the defence of people’s rights. The world that Walzer warns us of – one characterised by a “state of war” or “universal tyranny” - is a world in which people’s fundamental

---

<sup>50</sup> A. J. Coates, *The Ethics of War*, (Oxford: Oxford University Press, 1997), p. 127; McMahan, “What Rights,” pp. 149-150; Walzer, *Just and Unjust Wars*, pp. 58-59.

<sup>51</sup> Walzer, *Just and Unjust Wars*, p. 59.

rights to life and liberty are routinely violated.<sup>52</sup> States seem required to protect these rights, whenever they are permitted to do so.

One key concern must be to protect the rights of the state's own citizens. A global state of war or universal tyranny is a threat to them as well as everyone else. To this extent, the justification for defensive war based on upholding the norm of non-aggression can be seen as an extension of the previous justification from the defence of the rights of individual citizens. But a further legitimate concern is the defence of the rights of foreigners. That a state can be obliged to wage war to defend the rights of foreigners is familiar from the case of humanitarian intervention. If it is possible for states to be obliged to intervene to protect foreigners from a domestic threat, it also seems plausible that states can be obliged to uphold the norm of non-aggression to protect foreigners from external threats.

This is not to say that soldiers and taxpayers can be obliged to bear any cost to uphold the norm of non-intervention. As with humanitarian intervention, there must be a limit to the costs that cost bearers are obliged to bear. When the costs exceed that limit, states should not wage war to uphold the norm of non-aggression. When the costs fall below that limit, however, wars justified on this basis are also required. Upholding the norm of non-aggression is not then a case of Superfluous Transfer, where the benefit in question is of such a superfluous nature that no one has any obligation to provide it no matter how low the cost. People's rights are at stake; rights so important it is permissible to kill in their defence. As long as the costs fall within an acceptable range, states are obliged to act.

---

<sup>52</sup> Walzer would want to add that the rights of national communities is also at stake but, for reasons that will become clear in the next section, I doubt whether such rights can justify war.

There may still be an issue of fairness to be addressed. The norm of non-aggression is a global public good. The costs should be fairly distributed. It may be that states that are not attacked have an obligation to aid those that are attacked. But as with other global public goods, such as the fight against international organised crime or efforts to prevent climate change, a state is still required to take action even if others fail to do their fair share. Indeed, the fact that other states have shirked their responsibilities may actually oblige a state to do more.<sup>53</sup>

Let us sum up this section by noting what is perhaps the most important point of disanalogy between national self-defence and individual self-defence. What justifies an individual's resort to self-defence is the protection of something that is her own: her life, her liberty or her person. This is why the right to individual self-defence seems discretionary. But the above two justifications for national self-defence both refer to something that does not belong to the state. A state that fails to defend individual rights or uphold the norm of non-aggression, when it is justified in doing so, cannot justify this failure as merely allowing the violation of its own rights. This is not the case.

## **5. Defending the National Community**

But are there not occasions in which the state could be said to be only defending itself? Here we come to our third suggested justification: the defence of the state as a national community. Those that endorse this justification argue that states represent communities of great importance to their members. Within states, people can pursue a "common life": expressing their identity through their language

---

<sup>53</sup> Garrett Cullity, *The Moral Demands of Affluence*, (Oxford: Clarendon Press, 2004), pp. 73-77; Sabine Hohl and Dominic Roser, "Stepping in for the Polluters? Climate Justice under Partial Compliance," *Analyse & Kritik* 33 (2011): 477-500.

and cultural practices, and associating together to determine their own affairs.<sup>54</sup> But for states to function as genuine communities, it is argued, they must be protected from outside interference. Aggressors that would violate the political independence and territorial integrity of a state would disrupt or destroy the common life of its citizens.<sup>55</sup>

If states have rights as national communities, how should these rights be understood? Someone might claim that these rights are reducible to individual rights. On that view, talk of the rights of national communities is merely shorthand for the combined rights of their individual members to live in one place and associate freely together.<sup>56</sup> But this is not how the rights of national communities are usually understood. More often, they are conceived of as collective rights held by the citizenry as a whole. On this second view, no French person has a right that France exists but the French people as a whole have such a right.<sup>57</sup> Adopting this second view, one can see how a final argument for optional war may be derived. If citizens have a collective right to their national community, then they can decide, via state institutions, whether or not it is defended. Thus whenever the sole justification for war is the defence of the national community, the war is permitted but not required.

---

<sup>54</sup> The term “common life” is Walzer’s, *Just and Unjust Wars*, p. 54.

<sup>55</sup> Christopher Kutz, “Democracy, Defence, and the Threat of Intervention,” in *The Morality of Defensive War*, ed. Cécile Fabre and Seth Lazar, (Oxford: Oxford University Press, 2014); Margaret Moore, “Collective Self-Determination, Institutions of Justice, and Wars of National Defence,” in *The Morality of Defensive War*, ed. Cécile Fabre and Seth Lazar, (Oxford: Oxford University Press, 2014); Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, (New York: Basic Books, 2006), esp. pp. 63-69; Walzer, “The Moral Standing of States”.

<sup>56</sup> Cécile Fabre, “Cosmopolitanism and Wars of Self-Defence,” in *The Morality of Defensive War*, ed. Cécile Fabre and Seth Lazar, (Oxford: Oxford University Press, 2014), p. 95. If such an individualist account is adopted, the community argument for optional war fails at the outset.

<sup>57</sup> For a collective account of rights of this sort see the Kutz, Moore and Walzer references (footnote 50) and Avishair Margalit and Joseph Raz, “National Self-determination,” *The Journal of Philosophy* 87 (1990): 439-461; Anna Stilz, “Territorial Rights and National Defence,” in *The Morality of Defensive War*, ed. Cécile Fabre and Seth Lazar, (Oxford: Oxford University Press, 2014).

Let us call this argument for optional war the “community argument”. Of all the arguments, it seems to me the most plausible. The thought that states have rights as communities and can wage war on this basis is widely held. The idea that those rights are collective rights is not implausible. If then there were wars whose sole justification was the defence of the national community, those wars might well be optional. Nevertheless, I think this argument too is mistaken. In order to explain why, let me make three preliminary points.

First, it is worth emphasising that the argument depends on the existence of cases in which the community justification is the *sole* justification for war. Cases in which war can also be justified in defence of individual rights or the norm of non-aggression are no use. We have seen that when states are justified in waging war on these grounds, they are also required to do so. Adding a further justification – the defence of the national community – does not negate this requirement. Again, an analogy with the police proves helpful. If a criminal attacks a police officer and a group of civilians, the police officer is not only justified, but also required, to use (necessary and proportionate) force to protect the civilians and uphold the law. It is true that the police officer is also justified in using force to defend herself, but this further justification does not negate her duty to use force. It is only in cases in which self-defence is her sole justification for using force – as presumably it would be were she alone and off duty – that defence is optional.

Second, not all aggressors are alike. Some are worse than others. We have seen this in relation to individual rights; the same is true when considering the effects of aggression upon communities. Some aggressors would completely destroy the national communities of the states they target. They would commit genocide or impose such tyrannical rule that people would be left unable to express their identity

or associate freely to maintain communal bonds. But other aggressors pose little threat. A state that invades another to impose a stable democracy, for instance, might be guilty of aggression but does not destroy the community the state represents. Or imagine a case in which an aggressor annexes an uninhabited stretch of its neighbour's territory. Such aggression does little to disrupt the common life of the target state, whose citizens can continue their lives much as before.

Third, it is not easy to destroy a national community. We can see this from the history of minority nationalism. As Will Kymlicka has documented, the consensus amongst great thinkers of the 18<sup>th</sup> and 19<sup>th</sup> centuries, from Condorcet to Mill, was that minority nations would soon disappear. The Irish, Catalans, Poles and other such populations would abandon their identities for those of the more “advanced” nations that ruled their territories. This did not happen, not for any lack of violence and oppression, but because people seem able to maintain their cultural practices and associative bonds even in the face of violence and oppression.<sup>58</sup> The same lesson is discernable from more recent examples such as East Timor, Kurdistan and Tibet.<sup>59</sup>

With these points in mind, let me explain why I reject the community argument for optional war. The argument depends on the existence of cases in which the defence of the national community is the sole justification for war. Yet, for two reasons it seems doubtful that such cases exist. First, the community-based justification seems, if anything, less plausible than justifications based on individual rights or the norm of non-aggression. If states were permitted to wage war to defend themselves as communities, one would expect that other forms of community would

---

<sup>58</sup> Will Kymlicka, *Politics in the Vernacular*, (Oxford: Oxford University Press, 2001), pp. 203-207.

<sup>59</sup> As these examples indicate, and as proponents of the community justification for war accept (see, for instance, Walzer, *Just and Unjust Wars*, pp. 91-95), national communities can exist without state representation. I return to this point below.



have some similar privilege. After all, states are not the only type of community that is of great importance to its members; there are also various sub-national communities, including businesses, civic organisations, religious groups, trade unions and regional areas (neighbourhoods, cities, counties etc.). Yet these sub-national communities do not have a right to defend their independence by violent means.<sup>60</sup> If one business attempts a hostile takeover of another, the latter business has no right to react with violence.<sup>61</sup> Similarly, when the UK counties of Montgomeryshire, Radnorshire and Breconshire were forcibly merged by the national government in 1974, all three had a right to complain, but none to violently resist. The lack of an example in which the defence of a sub-national community can justify armed resistance lends us reason to doubt whether the defence of the national community can justify war.<sup>62</sup>

This is not to deny that states differ from sub-national communities in various ways. States exercise coercive power over their members, a fact that may enhance the importance of living within a state with which one identifies. Subnational communities, however, are voluntary and tend to be much smaller in size. As such, they are able to serve essential interests in autonomy and intimacy in ways that states cannot. As Rodin has noted, “[b]oth forms of community are clearly important, although in very different ways.” While these difference are worth reflecting upon, “there is nothing to suggest that the survival of one form of community should be

---

<sup>60</sup> McMahan, “What Rights,” pp. 129-130; Norman, *Ethics, Killing and War*, pp. 139-146; Rodin, *War and Self-Defense*, pp. 158-162; Rodin, “The Myth of National Self-Defence,” pp. 64-74.

<sup>61</sup> Rodin, “The Myth of National Self-Defence,” pp. 64-74.

<sup>62</sup> Note that this argument does not deny that sub-national communities may, at times, be permitted to use violence to defend individual rights or uphold the law. The point is merely that they are not permitted to use violence to defend their status as distinct communities; *ibid.*, p. 77.

accorded near infinite value, whereas the survival of the other next to none in determining permissible defensive action”.<sup>63</sup>

Contrast this with justifications for war based on individual rights and the norm of non-aggression. As we have seen, these justifications do have a domestic equivalent. The police can be justified in using force to defend individual rights and uphold the law. The existence of this example in which the defence of individual rights and the law can sometimes justify force in the domestic setting lends us reason to think that like considerations can sometimes justify force in the international setting.<sup>64</sup>

We have then reason to doubt whether defending the national community can ever justify war. But even if we leave this problem aside and assume that the justification sometimes applies, we still face the task of finding a case in which war is justified on this basis alone. Here we come to the second reason to doubt the community argument: those cases in which it seems most plausible that war could be justified to defend a national community are cases in which it seems no less plausible that war is justified on grounds of defending individual rights. Consider, for instance, cases in which an aggressor seeks to entirely destroy the national community. If there were a case in which the community justification succeeds, it would be case of this sort. Yet it is hard to see how an aggressor could entirely destroy a community unless it was prepared to perpetrate severe violations of individual rights. The mere denial

---

<sup>63</sup> Ibid., p. 76.

<sup>64</sup> For war to be justified in any particular case, all relevant just war conditions must be fulfilled including proportionality, last resort, reasonable chance of success and the permissible assignment of costs condition. The same conditions apply to the police. The police should not order their officers to use force if doing so is disproportionate, unnecessary, ineffective or imposes overly burdensome costs on the police officers involved or the taxpayers who fund their work. My point then is not that war is justified whenever it stands to defend individual rights or uphold the norm of non-aggression, but that the example of the police suggests that justifying war on these grounds is a genuine possibility. This contrasts with the attempt to justify war as a defence of the national community where our judgements regarding subnational communities suggests that violence could never be justified on this basis.

of sovereignty is not sufficient. As a number of philosophers have noted, and as examples such as Scotland and Quebec indicate, national communities can exist, and even flourish, without statehood.<sup>65</sup> Were an aggressor to permit citizens their basic rights, they would remain free to express their national identity and establish national (and nationalist) associations to maintain communal bonds. An aggressor might be able to entirely destroy a community were it prepared to impose tyrannical constraints. But as we saw in the last section, there seems strong reason to believe that the defence of individual rights can itself justify resisting an aggressor of this kind.

Conversely, the cases in which it is hardest to justify war on individual rights grounds are cases in which it is no less hard to justify war on grounds of defending the state as a community. Consider, for instance, the cases referred to above in which the aggressor seeks to institute democracy or annex uninhabited territory. Some theorists (such as Rodin) would deny that individual rights could justify war in these cases; the rights violations involved are, for them, too minor. But then (as Rodin would also grant) these are cases in which it seems no less hard to justify war on community grounds, given the limited impact of such aggression upon the common life of the target state.

Might there not be in-between cases: those in which an aggressor seeks to destroy a national community, not by tyranny, but by changing various incentives and institutional practices? Suppose, for instance, that upon victory an aggressor were to attempt to bribe people into adopting the aggressor's national identity with material rewards. We might also imagine an aggressor instituting coercive measures that stop

---

<sup>65</sup> See Allen E. Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*, (Boulder, CO: Westview Press, 1991), pp. 48-65; McMahan, "What Rights," pp. 135-136; Helder de Schutter, "Nations Beyond Nationalism," *Inquiry* 50 (2007): 378-394.

short of tyranny: for instance a law that bans the use of the native language in state schools and public administration but not in society at large.

The problem with this suggestion is that such an aggressor would leave the native population with plenty of opportunities to preserve their community through non-violent means (by refusing the bribes, speaking their own language at home, creating their own schools etc.). In the real world, it is almost certain that the native population would pursue these opportunities. As we have noted, national communities are not easily destroyed. People tend to remain loyal to their national culture and identity even under significant pressure to defect. If tyrannical rule could not destroy the sense of a distinctive national community in post-war Catalonia or occupied East Timor, it is hard to see how milder measures could work. But even if we imagine a hypothetical case in which the native population failed to pursue these opportunities, it is still hard to see how war could be justified on community grounds. War involves killing. It seems implausible that a state could justify killing in order to defend the existence of a distinct national community when the members of that community could preserve it through non-violent means were they motivated to do so. It is one thing to kill to prevent the forcible destruction of a community, it is quite another to kill in order to forestall a situation in which one's citizens acquiesce to its disbandment.<sup>66</sup>

To summarise: when it comes to the community argument for optional war there are two possibilities. The first is that states are never justified in waging war to defend the national communities they represent, since other forms of community lack this privilege. The second is that there are some cases in which war can be justified

---

<sup>66</sup> Of course, it remains unjust for aggressors to attempt to destroy a community even if it is by means that permit its members' opportunities to preserve their community. But the question we are asking here is not whether the aggressor's conduct is just but whether defence of the national community offers a uniquely plausible justification for war. In this case, as in the above cases, this is not so.

on community grounds, but these are extreme cases (e.g. tyranny or genocide) in which other justifications for war seem no less plausible. Without an example in which the *sole* justification for war is the defence of the national community, this last argument for optional war – which had seemed the most promising – also fails.

## **6. Conclusion**

States are required to wage the wars they are permitted to wage. We have come to this conclusion after assessing two arguments for optional war. The most popular of these arguments, that wars of humanitarian intervention are sometimes optional on account of their cost, failed since considerations of cost can only render war impermissible, not optional. The second argument, that a state's right to engage in national self-defence is discretionary, might have succeeded were there cases in which the sole justification for war was the defence of the national community, but the article found strong reason to doubt that such cases arise.

Two final points are worth making. First, let's us return to the domestic analogy. We have noted various points of disanalogy. Individuals might bear the costs of their own humanitarian interventions, but states assign these costs to soldiers and taxpayers. It is not the core function of ordinary individuals to defend others from attack; it is for states. Individuals can call upon the police to enforce the law; states must do so themselves. These points are crucial when considering the idea of optional war, but I have not claimed that all analogies between international affairs and domestic affairs should be rejected. In fact, as the reader will have noted, I have employed certain analogies myself. What is important is that the analogies we employ succeed in comparing like with like. Often a better analogy, than that between the state and ordinary individuals, is between the state and its agents (such as

the military) at the international level and the state and its agents (such as the police) at the domestic level. Thus we saw that a better analogy for the state imposed costs of humanitarian intervention than the self-imposed costs of a Good Samaritan are the state imposed costs of Good Samaritan laws. Similarly, we saw that a better analogy for resistance to aggression than individual self-defence is police protection from crime. The best analogy for the state in a domestic example is often the state itself.

Second, it is interesting to consider the implications of our findings for public debates regarding war. At first glance, it might seem that the denial of optional wars renders debate unnecessary. In a world without optional wars, morality always provides a determinate answer as to whether or not a war should be waged. Once people have that answer, there is nothing more to discuss. But, in fact, the denial of optional war still leaves plenty of room for debate. While morality is determinate, it is not transparent. Ascertaining whether a war is morally required or prohibited is difficult. It involves complicated normative and empirical judgements on such matters as the war's likely consequences, the justice of its cause, the feasibility of peaceful alternatives and the level of cost to which cost-bearers can permissibly be subjected. While governments and voters must make these judgements as best they can, disagreement is almost inevitable.

Nor should the denial of optional war radically change the nature of public debate. A belief in optional war may be widespread but it tends not to be invoked in arguments for or against particular wars. Instead, when states consider waging war, public debate focuses on precisely those factors that go into determining a war's deontic status: the war's likely consequences, the justice of its cause, etc. It is rare for a supporter and opponent of a war to agree that a war is morally permissible and disagree only over whether the state should exercise the 'option' of waging it. Almost

invariably, what divides supporters and opponents of a war is disagreement over the permissibility of waging it.

Where the denial of optional war is important is in demonstrating just how much is at stake. Without optional wars there is no buffer zone between the morally required and the morally prohibited. If decision makers fail to wage a permissible war, they fail to fulfil a moral requirement. If they wage a war that is not required, they wage a war that is impermissible. Far from rendering public debate unnecessary, the denial of optional war shows just how important it is that these matters are the subject of extensive deliberation. A war is either impermissible or required and we had better get it right.